Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board	)	
on Universal Service	)	CC Docket No. 96-45
	)	
Recommendations for Phasing Down	)	FCC 00J-1
Interim Hold-Harmless Provision	)	

JOINT COMMENTS

The National Exchange Carrier Association, Inc. (NECA), National Rural Telecom Association (NRTA), and Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) (collectively the *Associations*) jointly submit these comments in response to the Commission's *Public Notice* in the matter captioned above.[1]

On June 30, 2000, the Federal-State Joint Board on Universal Service (Joint Board) issued its Recommended Decision on phasing down the interim "hold-harmless" provision of the Commission's forward-looking high-cost universal service support mechanism for non-rural carriers.[2] The Joint Board recommended that: (1) long term

[1] *See* Federal Communications Commission Public Notice, Federal-State Joint Board On Universal Service Recommendations For Phasing Down Interim Hold-Harmless Provision, CC Docket No. 96-45, *Pleading Cycle Established*, DA 00-1536 (rel. July 11, 2000) (*Public Notice*). The *Public Notice* seeks comments on the Joint Board's recommendation to maintain long term support under current Commission rules, as well as the Joint Board's proposal for phasing down interim "hold-harmless" support.

[2] *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, FCC 00J-1 (rel. June 30, 2000)(*Recommended Decision*).

support (LTS) be continued under current Commission rules until the Commission considers appropriate reforms for the LTS program,[3] (2) the Commission should phase down the balance of interim hold-harmless support, excluding LTS;[4] and, (3) the Commission should not phase down interim hold-harmless support transferred to a rural carrier acquiring exchanges from a non-rural carrier.[5]

I. The Associations Fully Support the Joint Board Recommendation to Maintain LTS Under Current Commission Rules

In reaching this conclusion, the Joint Board observed this recommendation is consistent with the views of every party that addressed LTS in response to its (the Joint Board) request for comments.[6] NECA further emphasized its concerns by filing a *Petition for Reconsideration*[7] of the Commission's *Ninth Report and Order*.[8]

The Joint Board *Recommended Decision* echoed concerns expressed by the Associations. The *Ninth Report and Order* implies that, in addition to support associated

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[3] *See Recommended Decision* at ¶ 3.

[4] *Id.* The Joint Board recommended phasing down the balance of interim hold-harmless support, excluding LTS, via $1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter.

[5] *Id.*

[6] *Id.* at ¶¶ 6 and 10, citing Comments filed by: NECA; and Roseville Telephone Company; and Reply Comments of : ITTA; Nebraska Telephone Association; North State Telephone Company; Rural Telephone Coalition; and United States Telecom Association.

[7] *See* Federal-State Joint Board on Universal Service, National Exchange Carrier Association *Petition for Reconsideration*, CC Docket No. 96-45 (filed Jan. 3, 2000)(*Petition*).

[8] *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Ninth Report & Order and Eighteenth Order on Reconsideration*, at ¶ 78, 14 FCC Rcd. 20432 (1999)(*Ninth Report and Order*).

with unseparated loop costs, interim hold-harmless amounts also will include LTS payments currently available under section 54.303 of Commission rules.[9] The *Ninth Report and Order* also states that federal universal service support (including LTS) provided in the form of carrier revenue, is to be accounted for by states in their rate-making proceedings, effectively treating this support as intrastate revenue.[10]

The Associations urge the Commission to accept the Joint Board's recommendation and recognize that LTS is an *interstate* support mechanism, not included in, or replaced by, the new forward-looking economic cost mechanism implemented by the *Ninth Report and Order*. As rationale for its recommendations, the Joint Board said

> (U)nlike the preexisting high-cost loop support mechanism under Part 36, LTS for non-rural carriers is not replaced by the new, forward-looking high-cost support mechanism. The Commission concluded in the *Ninth Report and Order* that, to properly account for the separations rules, the new mechanism should provide support only for the percentage of total costs exceeding the national benchmark that are allocated to the *intrastate* jurisdiction, not for interstate-allocated costs such as those supported by LTS. . . . (N)o substitute support mechanism [for LTS] currently exists [in the Commission's rules]. . . ."[11]

[9] *Id.* at ¶ 95.

[10] *Id.* Similarly, the *Ninth Report and Order* states that all support amounts provided to non-rural carriers via the hold-harmless provision (again, apparently including LTS) "should continue to operate through the jurisdictional separations process to reduce book costs to be recovered in the intrastate jurisdiction." *Id.* at ¶ 106.

[11] *Id.* at ¶ 8.

The record in this and other proceedings provides ample explanation of this problem.[12] The Commission now should act swiftly to revise its hold-harmless rules and affirm that LTS will continue to all carriers, non-rural and rural alike, under existing Commission rules.

The Joint Board observes, as NECA indicated, that "if LTS were phased out for the three eligible non-rural carriers without a corresponding reduction in costs, the CCL rate for all NECA pool participants would increase."[13] The Associations share the Joint Board's concern about "potential rate impact on rural LTS recipients as a result of the phase-down of LTS for non-rural carriers."[14] This looming hazard easily may be avoided by removing LTS from the phase-down mechanism. The Associations urge the Commission to take this effect into account, and, when deciding finally upon a phase-down method, to exclude LTS support from the phase-down.

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[12] *See, e.g.,* Rural Telephone Coalition *Comments*, CC Docket 96-45, FCC 99J-2, at 5 (filed Dec. 1, 1999); NECA *Comments* at 5 (filed Dec. 1, 1999.) "Since LTS is an *interstate* revenue flow designed to offset interstate CCL revenue requirements for NECA pool members, non-rural carriers should continue to receive LTS notwithstanding any phase-out. LTS is a post-separations supplement to interstate access charge revenues, and is not used to offset *intrastate* revenue requirements." *See also, e.g.,* NECA *Reply Comments* in Federal-State Joint Board on Universal Service; Access Charge Reform, CC Docket Nos. 96-45 and 96-262 (filed Aug. 6, 1999) at n. 7. NECA informed the Commission of the need to defer planned changes in the way LTS amounts are calculated to assure consistency of results following implementation of new universal service mechanisms for non-rural carriers on January 1, 2000 (*i.e.*, continue to use the annual percentage change in NACPL to determine the following year's LTS amount); *and see Reply Comments* of Rural Telephone Coalition, CC Docket 96-45, FCC 99J-2, at 2-4 (filed Dec. 15, 1999); *and see* USTA *Reply Comments* at 6 (filed Dec. 15, 1999.)

[13] *See Recommended Decision* at ¶ 9, citing NECA Comments (" ... loss of LTS for non-rural carriers could cause the NECA CCL rate to rise by up to 42 percent.")

[14] *See Id.* (note omitted).

II. The "Parent-Trap Rule" Must Be Revised to Assure Sufficient Support for Serving Customers in Transferred Exchanges

The Joint Board expresses its "general concern about the operation of section 54.305"[15] of the Commission's rules as follows:

> (T)he rule prevents the acquiring carrier from receiving an amount of support related to the costs of providing supported services in the transferred exchange. Moreover, the rule requires the acquiring carrier to keep separate books of account for the acquired exchanges for an indefinite period of time. We strongly encourage the Commission to consider an alternative to section 54.305 at the earliest opportunity.[16]

The Associations agree. Section 54.305 should be revised because it does not allow carriers acquiring high cost exchanges to receive "sufficient" support, as required by section 254 of the Telecommunications Act. Under section 54.305 of the Commission's rules, companies that enter into a binding agreement to acquire exchanges from another company after May 7, 1997 are only permitted to receive universal service support for acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer.[17] Lines that rural carriers acquire from

[15] *See Id.* at ¶ 19. 47 C.F.R. § 54.305. The "Parent Trap Rule" restricts high cost support for a transferred exchange (acquired in a purchase or other transaction) to the same level of high cost support previously paid to the seller of the exchange. In the case of a rural carrier acquiring exchanges from a non-rural carrier, this effectively requires high-cost support for the acquired lines to be calculated pursuant to section 54.309. 47 C.F.R. § 54.309.

[16] *See Recommended Decision* at ¶ 20.

[17] 47 C.F.R. § 54.305.

larger carriers may have little, if any, support associated with them,[18] making it less likely that service will be upgraded in these historically under-served areas. (This rule also places a significant administrative burden on small carriers by requiring them to track these costs outside of their normal accounting procedures. This conflicts with stated Commission and Small Business Administration policy, and the Regulatory Flexibility Act.[19])

Implementation of the Commission's new high cost funding mechanism for non-rural carriers does nothing to solve the problem, as a recent transaction involving the sale of non-rural high-cost exchanges illustrates: in this case, Company A sold non-rural exchanges to company B, resulting in the formation of a new local exchange carrier. The forward-looking economic cost (FLEC) for these exchanges, calculated by the hybrid proxy model at the wire center level, is $66.09 per loop, per month. Because of the mechanics of the Commission's new non-rural high cost funding system, however, these lines are not eligible for high cost support from the model, and instead receive only $3.15 per line per month, in interim hold harmless funding. Even this amount will be phased

[18] Universal service rules specify calculating support at a study area level. *See* 47 C.F.R. § 36.611. In a study area that has both urban and rural exchanges, average cost-per-loop, and support levels, will be reduced by low cost urban lines. When rural carriers buy high cost lines from larger companies, the support is calculated on the basis of the non-rural carrier's cost-per-loop, and, therefore, is insufficient.

[19] The Regulatory Flexibility Act requires the Commission to analyze the impact of its rulemaking efforts, including projected reporting and record-keeping requirements, on small entities. In situations where there is an impact, the Commission has an obligation to look for alternative, less burdensome means to achieve its objectives. *See* U.S. Small Business Administration, Office of Advocacy, *A Guide to the Regulatory Flexibility Act*, p. 12 (May 1996). *See also* 5 U.S.C. A. § 604. Clearly, requiring a small LEC to duplicate record-keeping efforts has a significant economic impact on small entities, and the Commission has an obligation to look for a less burdensome alternative. *See* 5 U.S.C.A. § 601 *et.seq.* *See also FNPRM* at ¶ 153, n. 291, and Appendix F.

down to zero in a few years. The result is that acquiring companies have little hope of obtaining sufficient high cost funding to upgrade exchanges purchased from non-rural carriers.

The Associations urge the Commission to recognize that, not only must rural carriers acquiring exchanges from non-rural carriers be assured that "replacement support for the transferred exchanges" will be available,[20] they must, at the threshold, be assured of *sufficient* high-cost support for providing basic supported services. As part of this proceeding, the Commission should re-consider the actual effects that section 54.305's limitation on high cost support is having on customers living in outlying high cost exchanges. Since this prohibition is limiting the advancement of universal service, the Commission should revise or eliminate the rule.

III. The Commission Should Immediately Eliminate the Current Cap on High Cost Funding. If Continued, the Cap Must Be Calculated Without Regard to the Phase-Down in Hold-Harmless Support.

The Joint Board and the Commission have recognized that moving non-rural carriers to the forward-looking support mechanism, effective January 1, 2000, would have negative impacts on rural carriers absent adjustments in the way that the indexed "cap" on high cost funding is calculated.[21] In the *Ninth Report and Order,* for example, the Commission determined that the cap should continue to be calculated as if all carriers participate in the preexisting support mechanism because the growth rate in working loops for non-rural carriers historically has been faster than the growth rate in working loops for rural carriers. This difference in growth rates would mean reductions in high

[20] *See Recommended Decision* at ¶ 21.

[21] *See Id.* at ¶¶ 17-18.

cost support for rural carriers because the "base" on which the cap is calculated would be reduced.

The Joint Board's *Recommended Decision* recognizes that the same effect that the Commission sought to avoid in the *Ninth Report and Order* - smaller annual cap increases - also could result from subtracting phased-down interim hold-harmless support amounts from the calculation of the cap. The Joint Board accordingly recommended that the cap continue to be calculated though phased-down interim hold-harmless support were still being distributed to non-rural carriers.

The Associations agree. Unless the Commission makes this correction, all rural carriers' support will be artificially reduced, contrary to the Commission's intent. However, the Associations continue to believe that the better solution is to remove the "interim" cap entirely. Shortfalls in high cost support have reached record levels.[22] Rural customers, who are most in need of funding, will continue to lag behind customers in more urban parts of the nation in getting access to even basic telephone services so long as these unwarranted reductions in high cost funding continue.

IV. Conclusion

The Associations are in full agreement with the Joint Board's findings regarding the need to maintain LTS for all eligible carriers under existing Commission rules, pending appropriate reforms of the LTS mechanism. Also, LTS must be excluded from any consideration to phase down interim hold-harmless support. As shown above, and recognized by the Joint Board, LTS is an interstate support mechanism, not intended to offset intrastate rates. The Associations also strongly concur in the Joint Board's

[22] The shortfall for year 2000 alone will total $130 million.

recommendation that the Commission reform section 54.305 of its rules, and take immediate steps to assure sufficient high-cost support is provided to rural companies acquiring qualifying exchanges from non-rural companies. Finally, the Associations take this opportunity to remind the Commission that the "interim" cap on universal service must be removed. If, however, the cap is continued, it should continue to be calculated without regard to the phase-down of hold harmless support, as recommended by the Joint Board.

Respectfully submitted,

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